STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-849

June 23, 2003

MAINE PUBLIC UTILITIES COMMISSION
Inquiry Regarding the Entry of Verizon-Maine
Into The InterLATA Telephone Market Pursuant
To Section 271 of Telecommunication
Act of 1996

EXAMINER'S REPORT

NOTE: This Examiner's Report is written in the form of an Order; however, it is the Advisors recommendation only and does not constitute formal Commission action. Parties may file exceptions to this Report by close of business on June 30, 2003. We anticipate that the Commission will consider this case at its deliberative session on July 3, 2003.

I. SUMMARY

In this Order we approve the proposed changes to the Verizon-Maine (Verizon) Performance Assurance Plan (PAP) filed by Verizon on February 19, 2003 with certain corrections and changes as outlined below.

II. BACKGROUND

The Verizon-Maine PAP has been in effect since May 1, 2002. Verizon and the Commission adopted it as part of the271-approval process. The Maine PAP is based on the New York PAP, though there are some provisions that are unique to the Maine PAP, including the statistical methods.

The NY PAP undergoes periodic review and editing. The effort is led by a collaborative of industry representatives and New York Public Service Commission (NYPSC) Staff. As part of Verizon's effort to maintain a PAP that is as consistent as possible across all states that have adopted similar plans, after changes are approved and adopted in NY, the same changes are filed in the other states for Commission review.

On February 19, 2003, Verizon filed a revised PAP in Maine that was consistent with the NYPSC January 23, 2003 Order in Case 99-C-0949, amending the New York PAP, and Verizon's February 3, 2003 and February 11, 2003 filing in that proceeding. The February 19th filing also contained Maine-specific changes that Verizon described as "administrative and editorial." Verizon explained that the Company plans to implement the new PAP two calendar months following the MPUC approval of the proposed revisions. The February 19 filing was sent to the entire service list of Docket No. 2000-849 and since that date, no comments have been filed.

III. REVIEW OF PROPOSED CHANGES

We have reviewed Verizon's filing and find that most of the changes are reasonable and, in fact, largely "administrative or editorial." We agree that these changes are necessary and useful. However, some of the proposed changes rise to the level of being substantive and require more consideration and review. We will discuss these issues in detail below.

There are two provisions in the PAP where a penalty (or lack thereof) is determined based on the performance of Verizon over two or more months. First, in the aggregate reports, if Verizon's performance is calculated at a –1 level, then the performance in the previous two months is considered. If Verizon scored a 0 in either month then no penalty is assessed. If Verizon scored a –1 or a –2 in either month then a penalty will be assessed. Verizon proposes the following change in Footnote 5 on page 10:

> If there is no activity or insufficient sample for evaluation of a metric in either or both of the two previous months, the performance score from the previous month or scores from the previous 2 months will be used in that order to obtain two scores to determine the outcome of the –1 in the month under evaluation. If two scores cannot be obtained from the four months, the –1 in the month under evaluation will be changed to a 0.

In assessing Verizon's performance for an individual CLEC, a similar provision applies. Verizon has proposed the following parallel revision in Footnote 4 on page 3 of Appendix F:

> For the individual rule, if a CLEC has a performance score of –1 or less in the current month where Verizon passes a measure at the aggregate level and there is no activity in the previous month to determine the CLEC's eligibility for payment under the individual rule, VZ will instead look back one additional month for a performance score of –1 or less for the eligibility determination. If there is not activity in either of the two previous months, the individual rule will not be triggered.

These changes go beyond being merely administrative or editorial because these provisions could impact penalty amounts. It is especially significant given current CLEC activity levels in Maine during the past 12 months, as there are likely to be months with no activity and therefore these provisions are likely to be triggered. Because these changes take into account the unique market characteristics in Maine, we agree that they should be adopted.

A second area that requires discussion and consideration is the new language on page 19 related to a statute of limitations for corrections and challenges to data reported by the PAP. Verizon proposes to include the following language in Footnote 18:

> A two-year statute of limitation on challenges to PAP performance will be adopted and effective July 28, 2003 for the June 2003 performance report. The initiation of this provision is contingent upon Verizon ME providing the algorithms, in a structured format, related to the PAP metrics to the Commission Staff prior to July 28, 2003. Verizon ME will provide notice to CLECs receiving PAP reports that it has satisfied this obligation.

Information provided by Verizon in an email dated May 13, 2003, in response to Staff questions about this new footnote indicated that Verizon-NY requested language in the NY PAP that would have instituted a six-month statute of limitations. The justification for this change was the claims by Verizon that the PAP is an incentive plan not a penalty plan, and as more time goes by it becomes more difficult to analyze the data. CLECs in NY argued that such a provision would incent Verizon to manipulate or delay data. The NY PSC decided that two years was a reasonable compromise and added the provision that Verizon provide the algorithms to the Commission. We believe this compromise is reasonable and allow the provision to go into effect in Maine as well. Given the date of this Order, the Maine PAP should include a statute of limitations that is effective August 28, 2003 for July 2003 data.

Another change that requires more than cursory consideration is the change from 10 days to 15 days that is proposed on page 27 in the following sentence:

> Changes to the New York Plan adopted by the New York PSC will be filed with the Maine Commission within 15 business days of the compliance filings in New York for review and inclusion in the Maine Plan upon the Commission's approval.

Though this is only a change of one business week, it requires discussion because when Verizon first proposed the PAP it contained a provision for 30 days and Staff requested a 10-day window to match the language in the Massachusetts PAP. In response to Staff's inquiry regarding the basis for increasing the interval at this time from 10 to 15 days, Verizon responded in an email on May 13, 2003 that:

> Verizon Maine would like to avoid the need to file multiple changes with the Maine Commission. Generally, things are solidified within 1 to 3 weeks, which is why we [Verizon] proposed filing the changes within 15 business days of the compliance filings in New York.

In the previous year there have been relatively few PAP revision filings made by Verizon Maine, and there have been no cases where Verizon Maine has had to make multiple, corrected filings. At this time we are not persuaded that a change to this language is necessary. If, in the future, PAP filings (in particular, corrected PAP filings) become more frequent, we will consider changing the timeline. Until then, we will retain the 10-day interval in the Maine PAP.

There are two additional proposed changes to the PAP that appear reasonable but are areas where the Commission could benefit from the input of Maine CLECs, especially those who may be affected by the changes. First, throughout the proposed PAP document, the metrics for UNEs are now divided into two categories: UNE-loop and UNE-platform (and the penalty amounts are correspondingly redistributed). Given the changing competitive marketplace, this change seems reasonable, and if Verizon's performance in one area is consistently better or worse than others the Commission would have an interest in the PAP highlighting that difference. Second, in the proposed PAP, the EDI (Electronic Data Interchange) measures and references have been removed. At the time the original PAP was adopted, Verizon represented to the Commission that the number of orders received from Maine CLECs via EDI was very low. We assume that the number has remained low or even decreased and therefore the change would not only be reasonable, but maybe favorable to CLECs because it would redistribute potential penalty money to metrics that would be more likely to measure CLEC activity. Unless we hear persuasive evidence to the contrary from CLECs on either of these two points, we agree that the changes should be made

IV. OTHER ISSUES

On February 10, 2003 the Hearing Examiner issued a Procedural Order that stated that Verizon Maine filed a letter dated December 6, 2002, in this docket that outlined a proposed process for all Carrier-to-Carrier (C2C) changes that affect the Performance Assurance Plan. In her Order, the Hearing Examiner stated:

> Staff has reviewed this process and finds it reasonable. Any party that has an objection to the procedure outlined in the letter should file a letter with the Commission by February 18, 2003. If no comments are submitted, the process will be adopted. If it is adopted we will consider the December 6 letter Appendix J to the PAP and Appendix T to the C2C Guidelines.

As we have not received any comments, we order Verizon to make this change to the PAP and C2C Guidelines in their Compliance filing.

Finally, when Verizon filed its proposed PAP revisions on February 19, 2003, it submitted a redlined version of the current PAP. The redlined changes were made to a May 2002 PAP filing. However, in June 2002, Verizon filed an updated Maine PAP at the PUC. Upon bringing this to Verizon's attention, it was confirmed that Verizon did use the June 2002 PAP to make the redlined changes but the incorrect May date was inadvertently used. When Verizon makes its compliance filing it will include a corrected June 2002 redlined version of the changes made by this order and verify that there are no other changes or corrections related to this oversight.

V. CONCLUSION

We approve the proposed changes to the Verizon Performance Assurance Plan filed by Verizon on February 19, 2003 with the corrections and changes discussed above. We also order Verizon to include the December 6, 2002 letter that is attached to this Order as Appendix J in the PAP compliance filing. This Appendix should also be included in the Carrier-to-Carrier Guidelines as Appendix T. Finally, Verizon should make a corrected redlined filing and verify that the correct redlined version has been filed.

Respectfully submitted,

____

Trina M. Bragdon
On behalf of Staff